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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/244,550
Filing Date: February 03, 1999
Appellant(s): BRICHTA ET AL.

Chad D. Terrell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 21, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment after final rejection filed on March 4, 2004, has been entered.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-9, 13-14, 16, 18-26, 30-35, 38-42, 44-53, and 57-63; claims 27 and 54; and claims 28-29 and 55-56 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,765,140 KNUDSON et al 6-1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9, 13, 14, 16, 18-35, 38-42, and 44-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson et al (5,765,140).

Claims 1, 32, and 63: Knudson discloses a system and method for program office management, comprising:

a. storing informational, financial, schedule, program, personnel, roles, and security access data about a plurality of accounts, projects, and programs (col 3, lines 12-19);

b. storing a plurality of predefined tactics defining changes to a project (col 9, lines 50-54);

c. associating one or more project milestone categories with one or more of the predefined tactics (col 2, lines 2-17 and 56-60);

d. storing update data of the progress, actual expenditures, and labor resources of the projects and programs (Figure 4 and col 7, lines 40-47);

e. displaying data according to a predetermined security hierarchical scheme based on the security access information (col 5, lines 21-26 and col 9, lines 5-20);

f. automatically associating at least one milestone with a project based on a selected tactic (col 9, lines 50-54); and

g. periodically updating the data (col 6, lines 34-36 and col 7, lines 40-47).

Knudson discloses that many types of data pertaining to projects, budgets, and personnel are stored in the master project management database. The Examiner notes that the claimed data is the usual data associated with project management and is either explicitly shown by Knudson as being stored in the database or would have been obvious to one having ordinary skill in the art at the time the invention was made to include in the database.

Claims 2 and 40: Knudson discloses a system and method for program office management as in Claims 1 and 32 above, and further discloses that the database is a plurality of relational structures, i.e. a relational database (col 8, lines 41-55).

Claims 3, 4, 5, 58, and 59: Knudson discloses a system and method for program office management as in Claims 1 and 33, but does not explicitly disclose that the user interface is web-based or a self-extracting executable. However, Knudson does disclose that the system includes a plurality of widely dispersed servers and clients. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to connect these remote device together through the Internet and to use a user interface which was web-based (i.e. written in HTML). It would also have been obvious that the interface could automatically appear, i.e. be self-extracting, without further user input. In other words, once the user selects to open the program office management system, the user interface software is run (extracted) automatically without the user having to separately select and run it. The Examiner notes that this type of automatically executing program is well-known throughout the computer arts and

is used when opening many types of application programs, such as word processors, spreadsheets, browsers, etc. One would have been motivated to use these types of user interfaces in Knudson in order to provide the user with a more convenient, user-friendly interface upon which to work.

Claims 6 and 7: Knudson discloses a system for program office management as in Claim 1 above, and further discloses maintaining more than one copy of the database and user interface on distributed computer systems (col 3, lines 16-19).

Claims 8, 9, 13, 14, 33-35, 38, 39, 41, and 42: Knudson discloses a system and method for program office management as in Claims 1 and 32 above, and further discloses using a hierarchical system of security using assigned roles to control access by users to the database and to the entry of data/updates (col 5, lines 23-25 and col 7, line 57 – col 8, line 3).

Claims 16, 18-31, 44-57 and 62: Knudson discloses a system and method for program office management and further discloses tracking and storing the progress, budget, time schedule, personnel, problems, etc. of each project (col 2, line 42 – col 10, line 20). The Examiner notes that the claimed data is the usual data associated with project management and is either explicitly shown by Knudson as being stored in the database or would have been obvious to one having ordinary skill in the art at the time the invention was made to include in the database. Furthermore, since the claims are only directed to a database and a user interface with no action being taken on the data besides storing and retrieving, the data within the database is considered to be non-functional data per se and is given little if any patentable weight.

Claim 60: Knudson discloses a method for program office management as in Claim 32 above and further discloses storing the data in duplicate remote databases and retrieving data from the databases, but does not explicitly disclose that the retrieved data is verified with the data from another of the duplicate databases. The Examiner notes that this is a widely used and well known method of data verification, especially when monetary data is involved. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to verify the retrieved data by comparing it to the same data retrieved from a duplicate database. One would have been motivated to verify the data in this manner in order to ensure that the data had not been corrupted during transmission or that the data had not been "tampered" with.

Claim 61: Knudson discloses a method for program office management as in Claim 32 above, and further discloses retrieving data from the database and using the data to generate views, reports, and audits (col 9, lines 30-37).

(11) Response to Argument

(a) The Appellant argues that Knudson does not disclose the "various limitation as specifically recited in independent Claims 1, 32, and 63" and cites as an example the limitation in Claim 1 "that upon such selection of a first tactic, 'automatically associating with the particular project at least one milestone having a particular milestone category that was previously associated with the first tactic" (page 10). The Appellant then continues by describing why such a limitation would be useful in large organizations and gives examples of how it would be used. The Examiner notes that this was discussed

at length in the Response to Argument section of the final office action as is repeated below for the Board's convenience.

Applicant argues that Knudson does not disclose the claimed predefined tactics nor the associated milestones (page 16). The Examiner notes that Knudson discloses each project consisting of several predefined "tasks" and a time schedule for completing each of the tasks, i.e. milestones. It is also usual and widely known in the project management arts to consider various "tactics" when deciding not only on how to complete a project, but also on deciding on which is the proper project to begin with. For example, in a software development project the project manager could choose the tactic of updating a pre-existing (legacy) software program, importing a pre-made third party software product, or generating a completely new software program. Each of these choices would come with several tasks (milestones) to be completed, possibly with one or more of the tasks being required by more than one of the tactics. For example, one task that would be required for all of the above choices would be a final testing task. Other tasks, such as reviewing the pre-existing software, may be present in the first choice, but not necessary in either of the other two choices. Since the late 1950's project management software using the Program Evaluation Review Technique (PERT) and Critical Path Method (CPM) approaches have provided a defined method for inputting, managing, adjusting, and displaying tasks involved in projects, using such display formats as Gantt charts (Senn, James, "Analysis & Design of Information Systems", pages 800-804). Knudson explicitly discloses using the feedback pertaining to the progress and time schedule of the projects to revise project plans (col 8, lines 30-

40). Thus, it is obvious that Knudson would be using known PERT or CPM project management software ("Project Management Tool", Figure 2) not only to define and track the tasks (milestones) involved in a project, but also to determine which type of project (tactic) was appropriate to solve the problem.

It would have also been obvious in a large organization with recurring similar projects (e.g. software development) to re-use pre-defined project templates in order to preclude the project managers from having to develop similar projects from scratch. The project management software in use in the art at the time the invention was made utilized such templates (See Duncan, William R., "A Guide to the Project Management Body of Knowledge", page 61)(See also Lowery, Gwen, "Managing Projects With Microsoft Project 4.0", pages 11-25, 65-73, and 301-306). The Examiner would like to point out that the Lowery reference is a user's guide to Microsoft's project management software, "Microsoft Project", and that it was the fourth edition of this software product that came out in 1994. This, along with the Senn reference which was published in 1984 and again in 1989, further support the Examiner's assertion that such software was well known many years before the current application's filing date. By selecting to re-use one of these previously-defined project templates at least one milestone associated with the template would be automatically retrieved for inclusion into the new project.

(b) The Appellant argues that Knutson does not teach or suggest "the desirability of modifying Knutson to achieve the advantages of the claimed invention" (page 12). The Examiner notes that the obviousness taken in the rejection of the

independent claims was that while Knutson disclosed many of the claimed types of data being stored by the system, it would have been obvious to store the other non-disclosed types of data in the claims. It was further noted that these types of data were the usual types of data collected and used during project management. Figure 4 in Knutson shows storing many of the claimed types of data, such as informational data, financial data, schedule data, progress data, etc., which are used to produce various reports, such as project progress reports, time schedules, cumulative labor costs, time expended on the project, etc. (columns 7-9). Thus, the Examiner is not attempting to modify Knutson, but is pointing out that the specific types of data claimed as being stored by the project management system would be the usual and customary types of data found in the types of data Knutson discloses as being stored. Of course, the exact data being stored would depend upon the type of project, but would have little or no effect on how the project management software performed.

(c) The Appellant again argues in reference to Claims 16, 18-31, 44-57, and 62 by citing *In re Royka* and *In re Wilson* that "All words in a claim must be considered in judging the patentability of that claim against the prior art" and then continues by equating the non-functional data per se rejection to "what the Federal Circuit has termed a 'printed matter rejection'" (pages 13-15). The Examiner notes that as discussed in the rejection, the claims are system claims which are directed to a system which has one or more databases storing data and a user interface for entering, retrieving, and/o displaying the data. These same system devices are present in Knutson which also stores numerous types of data pertaining to project management.

However, in the reference as in the claimed invention, the specific data stored does not affect the steps involved in the claim ("store ... data", "display data", and "receive the update data on a periodic basis")(Claim1). For instance, Claim 23 further limits the "schedule and progress data" being stored in Claim 1 to "a milestone actual table operable to store an amount of progress into a specific milestone for a given period for a project". No action is being taken based on the stored data. The claim is merely stating that the schedule and progress data consists of data pertaining to the progress of the project, which is the interpretation one would usually associate with "schedule and progress data". The only possible limitation in this claim is that the data is being stored in the database as a table. However, again, this does not impart any further functionality on the steps of Claim 1. Knutson, for his part, discloses that his system has the advantage "for automatically tracking and controlling funding progress and time schedules for various projects" (col 4, lines 8-12) and that "the Dynamic Project Management System **10** includes an improved Time Entry System (TES) configured for specifically associating time tracking with separately developed project plans, as well as funding information" (col 4, lines 21-25). While this does not explicitly identify that the "amount of progress into a specific milestone for a given period for a project" is being stored as a table, it implies that such information is available from the database in order for the system to be able to track (and report) such information. However, as in the Appellant's invention, this data does not affect the steps of storing, retrieving and updating the data. This interpretation as the claims containing non-functional data per se has been upheld in the courts which stated that language that is not functionally

interrelated with the useful acts, structure, or properties of the claimed invention will not serve as a limitation (See *In re Gulack,* 217 USPQ 401 (CAFC 1983); *Ex parte Carver,* 227 USPQ 465 (BdPatAppl&Int 1985); and *In re Lowry*, 32 USPQ2d 1031 (CAFC 1994). As stated in MPEP 2106, "Nonfunctional descriptive material ca Applicant argues that Knudson does not disclose the claimed predefined tactics

nor the associated milestones (page 16). The Examiner notes that Knudson discloses each project consisting of several predefined "tasks" and a time schedule for completing each of the tasks, i.e. milestones. It is also usual and widely known in the project management arts to consider various "tactics" when deciding not only on how to complete a project, but also on deciding on which is the proper project to begin with. For example, in a software development project the project manager could choose the tactic of updating a pre-existing (legacy) software program, importing a pre-made third party software product, or generating a completely new software program. Each of these choices would come with several tasks (milestones) to be completed, possibly with one or more of the tasks being required by more than one of the tactics. For example, one task that would be required for all of the above choices would be a final testing task. Other tasks, such as reviewing the pre-existing software, may be present in the first choice, but not necessary in either of the other two choices. Since the late 1950's project management software using the Program Evaluation Review Technique (PERT) and Critical Path Method (CPM) approaches have provided a defined method for inputting, managing, adjusting, and displaying tasks involved in projects, using such display formats as Gantt charts. Knudson explicitly discloses using the feedback

pertaining to the progress and time schedule of the projects to revise project plans (col 8, lines 30-40). Thus, it is obvious that Knudson would be using known PERT or CPM project management software not only to define and track the tasks (milestones) involved in a project, but also to determine which type of project (tactic) was appropriate to solve the problem.

nnot render nonobvious an invention that would have otherwise been obvious" Cf. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983)(when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability)." The Appellant's argues against *In re Gulack* and *In re Lowry* in that "action is being taken" on the data because the data is being displayed according to a predetermined security protocol (pages 14-15). However, the security protocol merely adds limitations to the displaying step, not to the type of data being displayed. This security protocol is used when displaying any of the data stored in the database. Knutson, furthermore, includes a "security protocol" which uses a unique identifier "that identifies each user in the system **10** and controls access thereto" and uses "a security or access level flag, for example for levels 1 through 9, which determines permitted access to various functions of the TES system **10**" (col 5, lines 18-25). Thus, Knutson also is displaying the data "according to a predetermined security protocol". However, as in the present invention, this security protocol is used to determine access to any of the data stored in the database. The specific type of data (i.e. what fields the data consists of) within the

database does not affect the security protocol and is, therefore, also considered non-functional data per se.

(d) The Appellant again argues in reference to Claims 27 and 54 (Group 2) that Knudson does not contain the same data in the program office database as in the claims (pages 15-17). As discussed in the preceding paragraph, the claims contain non-functional data pre se in that the claims merely recite that relative importance (weight value) data is being stored as a table in the database, but makes no further use of the data nor discloses how the steps in Claim 1 would be affected by storing this data. Therefore, the Examiner considers this data to be non-functional data per se.

(e) The Appellant once again argues in reference to Claims 28-29 and 55-56 (Group 3) that Knudson does not contain the same data in the program office database as in the claims (pages 17-19). As discussed in the preceding paragraphs, the claims contain non-functional data per se in that the claims merely recite that information about problems encountered during the project will be stored as a table in the database, but makes no further use of the data nor discloses how the steps in Claim 1 would be affected by storing this data. The Appellant does give reasons on why this type of data may be stored and what the data could be used for. However, none of this is present in the claims and is merely speculative, intended use for the data. Therefore, the Examiner considers this data to be non-functional data per se.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

JWM
August 5, 2004

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